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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON
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6
7 ROBERT J. CODEGA,

8 Plaintiff,

9 v.
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11 WAGSTAFF, INC.,

12 Defendant.
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NO. 2:15-CV-00190-JLQ

ORDER DISMISSING CASE

14 This long-delayed case began upon Plaintiff's paying of the filing fee on August
15 21, 2015. On December 23, 2015, the court issued an Order to Show Cause why Plaintiff
16 had not served Defendant with the Summons or Complaint within 120 days after filing
17 the Complaint as established by Fed.R.Civ.P. 4(m). *See* (ECF No. 6). Plaintiff filed a
18 Response on January 12, 2016, requesting an additional 45 days to serve the Summons
19 and Complaint. *See* (ECF No. 7). The court granted an extension and gave Plaintiff until
20 February 12, 2016, to serve the Summons and Complaint. *See* (ECF No. 8). After
21 Plaintiff failed to serve the Summons and Complaint, the court dismissed this matter
22 without prejudice on February 25, 2016. (ECF No. 9).

23 On March 28, 2016, Plaintiff filed a Motion seeking to reopen the case and allow
24 him to serve the summons and complaint. (ECF No. 11). On April 6, 2016, the court
25 granted the Motion, reopened this matter, and gave Plaintiff 30 days to serve the
26 summons and complaint. (ECF No. 12). On May 6, 2016, Plaintiff filed a Declaration of
27 Service from a process server stating the summons and complaint were served on
28 Defendant's registered agent. (ECF No. 13).

1 On July 8, 2016, Defendant filed a Motion to Dismiss which alternatively
2 requested Plaintiff be ordered to file a more definite statement of his claims. (ECF No.
3 24). On July 29, 2016, Plaintiff moved for an extension of time to respond to the Motion
4 to Dismiss. (ECF No. 28). The court granted the motion and extended Plaintiff's deadline
5 to August 8, 2016. (ECF No. 31). On August 9, 2016, Plaintiff moved for another
6 extension to respond to the Motion to Dismiss. (ECF No. 35). The same day, Defendant
7 filed a response stating it did not oppose an extension and also informed the court it was
8 abandoning one of its arguments for dismissal. (ECF No. 37). The court granted Plaintiff
9 a one week extension to respond to the Motion to Dismiss, and directed Plaintiff to only
10 respond to the remaining arguments in the Motion to Dismiss. (ECF No. 38). On August
11 15, 2016, Plaintiff responded to the Motion to Dismiss, acknowledged he needed to
12 amend his Complaint, and requested leave of the court to do so. (ECF No. 39). Defendant
13 filed a Reply stating it did not oppose Plaintiff filing an Amended Complaint. (ECF No.
14 40).

15 On August 31, 2016, the court denied Defendant's Motion to Dismiss and granted
16 Plaintiff 30 days to file his Amended Complaint. *See* (ECF No. 42). At Plaintiff's request,
17 the court extended the deadline to October 11, 2016. (ECF No. 44 at 2). On October 17,
18 2016, Plaintiff filed a Motion for Extension of Time (ECF No. 45) and Motion to
19 Expedite (ECF No. 46) seeking an additional seven days from the filing of the Motion to
20 submit his Amended Complaint. On October 18, 2016, the court granted Plaintiff's
21 Motions and gave him 10 days to file the Amended Complaint, but also cautioned him
22 **"No further extension will be granted for this deadline. The failure to timely file the**
23 **Amended Complaint will result in the dismissal of this action.**" (ECF No. 47 at 2)
24 (emphasis in original). To date, Plaintiff has not filed an Amended Complaint or sought
25 extension of this deadline.

26 As the above procedural history establishes, Plaintiff failed throughout this
27 litigation to timely prosecute his case. The court warned Plaintiff on eight occasions the
28 failure to timely prosecute his case or comply with deadlines is grounds for dismissal. *See*

1 (ECF No. 6 at 2); (ECF No. 8 at 2); (ECF No. 12 at 2); (ECF No. 31 at 3); (ECF No. 38 at
2 2); (ECF No. 42 at 4); (ECF No. 44 at 2); (ECF No. 47 at 2).

3 District courts have the inherent power to control their dockets and “in the exercise
4 of that power, they may impose sanctions including, where appropriate ... dismissal of a
5 case.” *Thompson v. Housing Authority of City of Los Angeles*, 782 F.3d 829, 831 (9th Cir.
6 1986). A court may dismiss an action with prejudice based on a party’s failure to obey a
7 court order. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992); *Malone*
8 *v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987).

9 In determining whether to dismiss an action for failure to obey a court order or lack
10 of prosecution, the court must consider several factors: (1) the public’s interest in
11 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk
12 of prejudice to defendant; (4) the public policy favoring disposition of cases on their
13 merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831.

14 A presumption of injury arises from the unreasonable delay in prosecuting an
15 action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). A court’s warning to a
16 party that their failure to obey the court’s order will result in dismissal satisfies the
17 “consideration of alternatives” requirement. *In re Phenylpropanolamine (PPA) Products*
18 *Litigation*, 460 F.3d 1217, 1229 (9th Cir. 2006).

19 The court has considered each of the five factors and finds dismissal is an
20 appropriate sanction. First, this case has been unreasonably delayed by Plaintiff, resulting
21 in the dismissal of this case for failure to serve the Summons and Complaint. Although
22 this court chose to re-open this matter at Plaintiff’s request, Plaintiff continued to delay
23 and miss deadlines. Second, the fact this case is over a year old and has not proceeded
24 beyond initial pleadings weighs in favor of dismissal. Third, Defendant has been
25 prejudiced by the unreasonable delay in this matter, through both the presumption of
26 injury and also through the fact the passage of time affects the availability of evidence
27 and memory of witnesses. Lastly, while public policy favors disposition on the merits,
28 there is no other less drastic alternative available to adequately address the problems

1 described herein. The court has granted numerous extensions and accepted late filed
2 requests for extensions. Plaintiff has not heeded the explicit warnings to meet deadlines
3 and timely prosecute his case. The court has already dismissed this case once, but that has
4 not stopped the pattern of delay. For all of the above reasons, the court finds the failure to
5 prosecute and unreasonable delay of this matter in violation of the court's Orders requires
6 dismissal of this matter with prejudice.

7 **IT IS HEREBY ORDERED:**

8 Based on Plaintiff's failure to prosecute and failure to comply with Orders of the
9 court, the Clerk is directed to enter Judgment dismissing the Complaint (ECF No. 4) and
10 the claims therein **WITH PREJUDICE** and without costs or attorneys' fees to any party.

11 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order and
12 Judgment, furnish copies to counsel and Mr. Codega, and close this file.

13 Dated November 3, 2016.

14 s/ Justin L. Quackenbush
15 JUSTIN L. QUACKENBUSH
16 SENIOR UNITED STATES DISTRICT JUDGE
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